

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Jon D. Gruber, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

Ryan R. Gilbertson; Michael L. Reger;
Gabriel G. Claypool; Craig M. McKenzie;
Timothy R. Brady; Terry H. Rust; Paul M.
Cownie; David J. Fellon; Gary L. Alvord;
James L. Thornton; James Randall Reger;
Joseph Clark Reger, Individually and as
Custodian for W. J. R. and J. M. R. (UTMA);
Weldon W. Gilbertson, Individually and as
Custodian for H.G. (UTMA), and as Trustee
of the Ryan Gilbertson 2012 Family
Irrevocable Trust; The Total Depth
Foundation; Jessica C. Gilbertson (a/k/a
Jessica Medlin); Kellie Tasto, as Custodian
for H.G. (UTMA),

Defendants.

Case No. 1:16-cv-09727-WHP

**NOTICE OF MOTION AND MOTION TO DISMISS THE THIRD AMENDED CLASS
ACTION COMPLAINT BY DEFENDANTS JAMES RANDALL REGER,
JOSEPH CLARK REGER, WELDON W. GILBERTSON, AND KELLIE TASTO**

NOTICE OF MOTION

PLEASE TAKE NOTICE that a hearing will be held on June 4, 2019 at 11:00 a.m. EDT before The Honorable William H. Pauley III in Courtroom 20B of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007 on the Motion to Dismiss the Third Amended Class Action Complaint by Defendants James Randall Reger, Joseph Clark Reger, Weldon W. Gilbertson, and Kellie Tasto.

MOTION

Under Federal Rule of Civil Procedure 12(b)(6), Defendants James Randall Reger, Joseph Clark Reger, Weldon W. Gilbertson, and Kellie Tasto (together, “Nominee Defendants”) move the Court for an order dismissing Count III of the Third Amended Class Action Complaint against Nominee Defendants with prejudice because the Third Amended Class Action Complaint fails to state a Section 20A claim upon which relief can be granted and fails to plead fraud with particularity. This motion is based on all of the pleadings, files, records, and proceedings in this matter, the memorandum filed in support of the motion, and the arguments of counsel to be made at the hearing.

Dated: April 5, 2019

KELLY & JACOBSON

s/ Thomas M. Kelly

Thomas M. Kelly (admitted *pro hac vice*)

650 3rd Ave S., Suite 260

Minneapolis, MN 55402

tom_kelly@qwestoffice.net

(612) 339-5055

Attorney for Defendants James Randall Reger
and Joseph Clark Reger, Individually and as
Custodian for W. J. R. and J. M. R. (UTMA)

Dated: April 5, 2019

GREENE ESPEL PLLP

s/ Matthew D. Forsgren

Matthew D. Forsgren (admitted *pro hac vice*)

222 S. Ninth Street, Suite 2200

Minneapolis, MN 55402

mforsgren@greeneespel.com

(612) 373-0830

Attorneys for Weldon W. Gilbertson,
Individually and as Custodian for H.G. (UTMA),
and as Trustee of the Ryan Gilbertson 2012
Family Irrevocable Trust; and Kellie Tasto, as
Custodian for H.G. (UTMA)